


BULLETIN

TO: All Prime Subcontractors and Material Suppliers performing work for any of the Northeast Region's subsidiaries of Hovnanian Enterprises, Inc. in New Jersey

FROM: Stephen M. Dahl, Chief Legal Counsel
K. Hovnanian Companies Northeast, Inc. 

DATE: February 4, 1992

RE: NJDEPE New Regulations on Discharge of Hazardous Substances

The New Jersey Department of Environmental Protection and Energy ("NJDEPE") has adopted new regulations effective September 3, 1991 under the New Jersey Spill Compensation and Control Act ("Spill Act"). These regulations impose an absolute duty to report a discharge of hazardous substances and establish specific penalties for violations.

Hazardous Discharges

The new regulations create very strict standards for the reporting of discharges of hazardous substances. "Any person or persons responsible for a discharge who knows, or reasonably should know, of the discharge" is required to immediately report the incident to NJDEPE. The regulations establish a presumption that the reporting of a discharge more than fifteen (15) minutes after a person responsible for it knew, or reasonably should have known of its existence, is not an "immediate" report. Within thirty (30) days of providing the necessary immediate telephone notification a written confirmation report must be submitted to NJDEPE as a follow-up notification.

The new regulations broadly define a "person responsible for a discharge". The definition includes any:

- 1) person whose act or omission results in a discharge;
- 2) person who owns or controls any hazardous substances which are discharged;
- 3) person who has directly or indirectly caused the discharge;
- 4) person who has allowed a discharge to occur; or
- 5) person who brokers, generates or transports the hazardous substances which are caused to be discharged.

As you can see, the above definition is very broad. In all instances all Prime Subcontractors or Material Suppliers whose employees, agents or subcontractors, are in any way involved with a discharge of any substance which contains hazardous components should expect to be required to report the discharge as a "person responsible" for same. Verbal reports of such discharges should be made to NJDEPE at (609) 292-7172.

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A "discharge" that must be reported is any act that results in the "releasing, spilling, pumping, pouring, emitting emptying or dumping of a hazardous substance" into, or which would effect, New Jersey waters or lands. There are no exceptions for minor spills, no matter how small they are. There is no distinction between a "discharge" and a "leak" for reporting purposes.

The new regulations establish civil penalties for violations. The base penalty for varying quantities of spilled hazardous substances range from \$500 for a spill of 9 gallons or less to \$10,000,000 for a spill in excess of 5,000,000 gallons or more. Various factors such as response time, cause of the discharge, impact area and discharge history can cause the penalties to be either increased or decreased. Violations can result in a maximum penalty of \$50,000 for each day the violation continues. The nature of the penalties which can be imposed makes compliance with the regulations imperative.

Contract Requirements

Regardless of whether you are performing work under a Subcontract Agreement or a Material Supplier Agreement, you are required to comply with all applicable state and federal laws and regulations. Our purpose for sending you this bulletin is to emphasize the above recent changes to the Spill Act and NJDEPE's resulting regulations. Because they are far reaching, we urge each Prime Subcontractor and Material Supplier to adopt a company policy for complying with them and suggest that you give appropriate instructions to all employees and others who will be at our job sites performing work for you.

In addition to the Spill Act's requirements of notifying NJDEPE of hazardous waste discharges, the "On Site Representative" of each Prime Subcontractor (as described in your contract with us) and all employees of Material Suppliers who become aware of any act of spilling or discharging of anything that is suspected of being, or containing, a hazardous substance at or around any Hovnanian owned or controlled job site, as soon as NJDEPE is contacted, are to IMMEDIATELY verbally contact one of the following persons as soon as they learn of an actual or suspected spill or discharge:

- A. Project Superintendent (at the job site)
- B. Project Director for the job (at the construction trailer or at (908) 747-7800)
- C. Project Attorney for the job (at (908) 747-7800).

If verbal contact cannot be directly made to at least one of the above individuals, the verbal report should be made to the following:

- D. Division President at (908) 747-7800
- E. Northeast Region General Counsel at (908) 747-7800
- F. President of the Northeast Region at (908) 747-7800

VERBAL NOTIFICATION TO K. HOVNANIAN DOES NOT RELIEVE YOU OF THE OBLIGATION TO NOTIFY NJDEPE OF THE HAZARDOUS WASTE DISCHARGE.

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Written confirmation of this notice must be FAXED to the Project Director's attention at (908) 747-7159 or (908) 747-6721 or (908) 219-9218. This written confirmation should detail all relevant facts including, but not limited to, the following:

- A. Names, address and telephone numbers of all people involved and witnesses;
- B. Location of suspected discharge;
- C. Identification of suspected hazardous substances discharged;
- D. Cause of discharge;
- E. Extent of discharge;
- F. Vehicle license plate, registration and driver's license number as relevant;
- G. A drawing of the area.

We suggest you obtain further guidance from your own attorneys or other professionals regarding these new laws and regulations and your duties to comply with same.

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